

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ENFORCEMENT AND REMOVAL OPERATIONS
ICE HEALTH SERVICE CORPS**

ADVANCE DIRECTIVES, DO NOT RESUSCITATE AND TERMINAL ILLNESS

IHSC Directive: 02-01

ERO Directive Number: 11720.3

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**By Order of the Acting Assistant Director
Stewart D. Smith, DHSc/s/**

- 1. PURPOSE:** The purpose of this issuance is to set forth policies and guidance regarding end-of-life decision making (e.g., advance directives, living wills, health care proxies, and Do Not Resuscitate (DNR) orders) for detainees in U.S. Immigration and Customs Enforcement (ICE) Health Service Corps (IHSC)-staffed facilities.
- 2. APPLICABILITY:** This directive applies to all IHSC personnel, including but not limited to, Public Health Service (PHS) officers and federal employees supporting health care operations in ICE-owned or contracted detention facilities and to IHSC Headquarters (HQ) staff. This directive applies to contract personnel when supporting IHSC in detention facilities and at HQ. Federal contractors are responsible for the management and discipline of its employees supporting IHSC.
- 3. AUTHORITIES AND REFERENCES:**
 - 3-1.** Title 8, Code of Federal Regulations, Section 235.3 ([8 CFR § 235.3](#)), Inadmissible Aliens and Expedited Removal;
 - 3-2.** Section 232 of the Immigration and Nationality Act, as amended, Title 8, U.S. Code, Section 1222 ([8 U.S.C. § 1222](#)), Detention of Aliens for Physical and Mental Examination;
 - 3-3.** Title 8, Code of Federal Regulations, Part 232 ([8 CFR 232](#)), Detention of Aliens for Physical and Mental Examination;
 - 3-4.** Section 322 of the Public Health Service Act, as amended, Title 42, U.S. Code, Section 249(a) ([42 U.S.C. § 249\(a\)](#)), Medical Care and Treatment of Quarantined and Detained Persons;

- 3-5.** Title 42, U.S. Code, Public Health Service Act, Section 252 ([42 U.S.C. § 252](#)); Medical Examination of Aliens;
 - 3-6.** Patient Self-Determination Act of 1990, Requirements for Advance directives under State Plans for Medical Assistance; and
 - 3-7.** The laws governing Advance Directives, Do Not Resuscitate (DNR) Orders, and other similar health care instructions appointing a person to make health care decisions on behalf of an individual are governed by State law and vary from State to State. It is incumbent that personnel are familiar with the laws of the jurisdictions for which they are responsible to manage the initiation of an advance directive or DNR.
- 4.** **POLICY:** Mentally competent detainees/residents, hereafter referred to as "detainees," have the option to direct, in advance, the withholding or withdrawal of certain medical treatments when recovery or cure is not possible. Detainees may also appoint, in advance, proxy decision makers to make critical health care decisions on their behalf should they become incapacitated and unable to make such decisions. The detainee's right to refuse medical treatment is not absolute and, in all cases, is weighed against legitimate governmental interests, including the security and orderly operation of the detention facility. In all cases, detainees /residents are counseled on the implications of a DNR order. Health care personnel do not proceed with implementation of a DNR order unless the DNR meets the requirements below and the order is enacted.
 - 4-1. Requirements for DNR Order:** DNR orders are not initiated unless the detainee has been diagnosed with a terminal illness with a lifespan of less than one year. A detainee, or a detainee's health care proxy, if applicable, may revoke a DNR order at any time. DNR orders must comply with the laws of the state in which the detainee is housed.
 - a. The health record documents of those terminally ill patients executing advance directives have been provided with sufficient and appropriate information to make voluntary and informed decisions.
 - b. The detainee's decision to initiate a DNR is voluntary, uncoerced, and based on medical information that is complete and comprehensible to the detainee.
 - 4-2. Health Care Proxy.** A health care proxy is a person authorized to make health care treatment decisions for a detainee who is incapacitated and unable to make and/or communicate such decisions. The authority, parameters, and procedures for creating such proxies are governed by the laws of the state in which the facility operates.

NOTE: Under no circumstance will any IHSC employee or contractor serve as a health care proxy for a detainee.

- 4-3. **Detainees Arriving with a DNR Order.** A DNR order is only valid in the facility where the DNR order was prepared, and is not portable.
- 4-4. **Independent Review.** An IHSC physician not directly involved in the detainee's treatment must perform an independent review before a health care proxy, living will, or advance directive can be used in the detention facility for the basis of making medical care decisions. The IHSC physician will be selected by the IHSC Associate Medical Director (AMD). The reviewing physician will ensure that the document is in accordance with the laws of the applicable jurisdiction responsible for managing the initiation of the advanced directive or DNR.
- 4-5. **Notifications.** When the facility physician determines that the terms and conditions of the detainee's advance directive or living will shall be implemented, the Clinical Director (CD) or designee, or Health Services Administrator (HSA), makes appropriate notifications
 - a. **Validation:** The Deputy Assistant Director (DAD) for Clinical Services validates the DNR order and notifies the IHSC Assistant Director (AD), who further notifies ICE's Office of the Principal Legal Advisor (OPLA), of the implementation of the DNR order. The required documentation for validation is in accordance with PBNDS 2011, 4.7 Terminal Illness, Advanced Directives and Death (C).
 - (1) Emergency resuscitative measures are always performed on a detainee who suffers cardiopulmonary arrest at a detention facility until the advance directive or DNR order is validated.
 - (2) DNR orders are never invoked while a detainee is housed at an IHSC-staffed detention facility if the validation of the DNR order is pending.
- 4-6. **State-Specific Procedures:** Each medical facility establishes guidelines following and using the state-specific requirements, as well as the State-approved forms for advance directives and DNR orders. State guidelines and forms are available at the "[Caring Connections](#)" website. Translation services are provided to the detainee, as indicated.
 - a. **Required Content for Guidelines.**
 - (1) A health care provider prepares DNR orders, and the CD or HSA, and IHSC Medical Director approve the DNR orders prior to

implementation. The IHSC Medical Director notifies the ICE Office of Chief Counsel of the DNR order.

- (2) The CD or HSA notifies the IHSC Medical Director of the circumstances for the DNR order, and the DNR order is scanned into the detainee health record.
- (3) Written procedures for notification of the DNR order are given to health care personnel.
- (4) A stipulation indicating that a decision to withhold resuscitative services is considered only when all of the following specified conditions are met:

The detainee is diagnosed, by a physician, as having a terminal illness or fatal injury;

The detainee has requested and signed the order, or a decision is made by a health care proxy for the detainee;

The decision is consistent with sound medical practice, and is not in any way associated with assisting suicide, euthanasia, or other such measures to hasten death.

- (5) A sample standard form for the detainee's use from the respective state statutes on advance directives should be included.
- (6) Instructions for a detainee wishing to execute advance directives before, or after, the onset of a terminal illness, including the option of retaining private legal counsel at the detainee's expense for assistance.
- (7) Instructions for a detainee, or health care proxy, to revoke the advance directive and/or DNR order.

b. **Supplemental Instructions:** IHSC submits any locally developed supplemental instructions or guidelines for review and approval by the facility's Assistant Field Office Director (AFOD), Health Services Administrator (HSA), Chief of the Medical Quality Management Unit, IHSC Medical Director and OPLA.

4-7. Implementation and Revocation of DNR Orders. IHSC will continue to provide health care consistent with the DNR order and a scanned version is in the detainee's health record. A detainee, or a detainee's proxy, may change his/her decision to withhold resuscitative services and revoke a DNR order at any time.

- a. **Health Record:** The detainee health record is documented once the validation of the DNR order is received; and, the validation document is scanned into the Administrative folder. The health record is annotated with “Do Not Resuscitate” or “DNR” as a Global alert set in the electronic health record system (eHR). IHSC advises the AFOD if a detainee has executed a valid DNR.
 - (1) If the DNR order is revoked, IHSC removes the Do Not Resuscitate/DNR Global alert. The revocation document is scanned into the Administrative folder in the health record. IHSC advises the AFOD that the detainee, or the detainee’s proxy, has revoked a previously executed DNR order.
- b. **Terminal Illness:** When a detainee’s medical condition decompensates to the point that appropriate care cannot be provided, the CD or HSA coordinates with the IHSC Medical Case Management Unit to arrange the transfer of the detainee to an appropriate off-site medical facility, if necessary, or recommends early release and immediately notifies the AFOD and the IHSC DAD of Clinical Services/Medical Director of the detainee’s/resident’s condition. A copy of the Advanced Directive or Living Will shall accompany the detainee upon transfer.

4-8. **Staff Training.** All health care staff complete training on policy requirements pertaining to initiating an advance directive and DNR order upon assignment to the clinic and annually thereafter. The Chief of Medical Education and Development oversees development of state-specific trainings for all IHSC-staffed medical facilities. Training includes:

- a. Description of existing conditions that require counseling a detainee for an advance directive or DNR order;
- b. An overview of state-specific requirements and forms;
- c. Who may serve as a health care proxy and under what conditions the person may do so;
- d. How to review and validate, or reinitiate, an advance directive or DNR order from within and outside the state; and
- e. How to file and record data in the health record.

5. PROCEDURES:

5-1. **DNR Processing and Notification:** When the conditions of a DNR are met, the CD, HSA or designee, notifies the DAD of Clinical Services/Medical

Director and the DAD of Administration and requests processing of the DNR.

- a. **Required information for DNR processing:** The notification above includes the name, alien number, and basic circumstances surrounding the implementation of the document, as well as a scanned version of the Advanced Directive or Living Will.
- b. **Notification of Local ICE Leadership:** Once the DNR order is processed and the DNR order validated, the CD or HSA notifies the AFOD that the DNR has been validated and is active.
- c. **Documenting the Receipt of validated DNR Order:** An entry is placed in the detainee's health record to document the receipt of the validated DNR order. After entry of the receipt of the validated DNR order, the DNR order is followed by all health care personnel. A global alert is entered into the health record (and a Special Need form generated).
- d. **Documenting the Revocation of a DNR Order:** The CD, HSA or designee places an entry in the detainee's health record to document revocation of a DNR order, whether by the detainee or the detainee's proxy. The revocation document is scanned into the health record and the global alert is removed.

5-2. **Terminal Illness Notifications and Management:** The HSA documents the detainee's condition in a memorandum to the facility administrator and IHSC Medical Director that briefly describes the illness and prognosis.

- a. **Notification:** The AFOD, after consultation with the CD or HSA, immediately notifies the Field Office Director (FOD), who notifies HQ Field Operations and next of kin.
- b. **Treatment Plan:** IHSC creates a treatment plan for the terminally ill detainee.
- c. **Authority to Make Medical Decisions:** The CD or designated physician is responsible for the medical care needs of the detainee while in a detention facility. Upon transfer to a hospital, or other off-site care facility, the off-site facility's physician assumes medical decision-making authority for care, and the hospital's policies and procedures concerning seriously ill, injured, and dying patients apply to ICE detainees. A copy of the Advanced Directive or Living Will shall accompany the detainee upon transfer.
- d. **Visitation:** IHSC staff refers any inquiries related to the detainee's condition or request for visitation to the AFOD.

- e. **Monitoring:** If the detainee is admitted to a community facility, the HSA or IHSC Field Medical Coordinator (FMC) coordinates with the hospital on a daily basis to receive updates regarding the detainee's condition. IHSC provides daily updates to the IHSC DAD of Clinical Services/Medical Director.

5-3. Assessment of Mental Capacity: If a detainee's capacity to make medical decisions regarding an advanced directive/DNR order is in question, the Primary Care Provider must request a behavior health provider (BHP) evaluate the detainee. If the BHP concurs that there are reasons to question the mental capacity of the detainee, then a full forensic mental health examination must be requested to formally determine the detainee's capacity to make medical care decisions.

6. HISTORICAL NOTES: This directive replaces IHSC Directive: 02-01, dated 25 May 2015. It makes changes to section 4, 4-1, 4-4, 5-2e, and 5-3. It also adds definitions.

7. DEFINITIONS:

Advance Medical Directive – Advance Medical Directives include documents which address living wills, medical power of attorney, durable power of attorney for healthcare, and healthcare proxy. Advance directives are state-specific. (IHSC Operational Definition)

Clinical Director (CD) – The Clinical Director is a physician and is the clinical medical authority at a specific facility. Duties include clinically supervising the Staff Physician (if applicable) and mid-level providers, evaluating patient care through an ongoing quality assurance program, providing training and mentoring to health care staff, and evaluating and treating medically complex patients. The CD is board certified in family medicine, internal medicine, or related primary care specialty to maintain employment. (IHSC Operational Definition)

Health Care Personnel or Providers – Health care personnel or providers are credentialed individuals employed, detailed, or authorized by IHSC to deliver health care services to detainees. It includes federal and contract staff assigned or detailed (i.e. temporary duty) who provide professional or paraprofessional health care services as part of their IHSC duties. (IHSC Operational Definition)

Health Services Administrator (HSA) – The HSA is the designated IHSC administrator at a facility who provides administrative and supervisory oversight of day to day operational activities at IHSC staffed medical facilities. (IHSC Operational Definition)

8. APPLICABLE STANDARDS:

- 8-1. Performance Based National Detention Standards (PBNDS) Standard:**
4.7 Medical Care and Terminal Illness, Advance Directives and Death
- 8-2. ICE Family Residential Standards:** 4.6 Terminal Illness, Advance Directives, and Death
- 8-3. American Correctional Association (ACA):** Performance-Based Standards for Adult Local Detention Facilities, 4th edition
 - (1) 4-ALDF-4D-15, Informed Consent
 - (2) 4-ADLF-4D-26, Health Records
 - (3) ALDF-4C-07, Treatment Plan
- 8-4. National Commission on Correctional Health Care (NCCHC):**
Standards for Health Services in Jails, 2014
 - (1) J-G-11, Care for the Terminally Ill
 - (2) J-I-04, End-of-Life Decision Making

9. PRIVACY AND RECORDKEEPING. IHSC stores, retrieves, accesses, retain, and disposes of detainee health records in accordance with the Privacy Act and as provided in the Alien Health Records System of Records Notice, 80 Fed. Reg. 239 (Jan. 5, 2015). The records in eHR/eCW are destroyed ten (10) years from the date the detainee leaves ICE custody. Retention periods for records of minors may differ. Paper records are scanned into eHR and are destroyed after upload is complete.

10. NO PRIVATE RIGHT STATEMENT. This directive is an internal policy statement of IHSC. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.